

House Study Bill 249

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
ECONOMIC GROWTH BILL BY
CHAIRPERSON THOMAS)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the rulemaking process and the judicial review
2 of administrative rules, the assessment of court costs and
3 attorney fees, rulemaking requirements specific to the
4 environmental protection commission and the natural resource
5 commission, and including effective date and applicability
6 provisions.
7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
8 TLSB 2219YC 83
9 jr/rj/5

PAG LIN

1 1 Section 1. Section 17A.2, Code 2009, is amended by adding
2 the following new subsections:
1 3 NEW SUBSECTION. 4A. "Compliance assistance letter" means
1 4 a written communication to a person by an agency that
1 5 identifies an alleged violation of a federal or state statute,
1 6 agency rule, or executive order but does not identify any
1 7 rights to appeal the agency's determination through a
1 8 contested case proceeding.
1 9 NEW SUBSECTION. 10A. "Regulated person" means a person
1 10 that may be impacted by a proposed rule through an increased
1 11 regulatory burden, including increased compliance or reporting
1 12 costs, but does not include an increased regulatory burden due
1 13 to the adoption by reference of a required federal regulation.
1 14 Sec. 2. Section 17A.4, subsection 1, paragraph a, Code
1 15 2009, is amended to read as follows:
1 16 a. Give notice of its intended action by submitting the
1 17 notice to the administrative rules coordinator and the
1 18 administrative code editor. The administrative rules
1 19 coordinator shall assign an ARC number to each rulemaking
1 20 document. The administrative code editor shall publish each
1 21 notice meeting the requirements of this chapter in the Iowa
1 22 administrative bulletin created pursuant to section 17A.6.
1 23 Any notice of intended action shall be published at least
1 24 ~~thirty-five~~ sixty days in advance of the action. The notice
1 25 shall include a statement of either the terms or substance of
1 26 the intended action or a description of the subjects and
1 27 issues involved, and the time when, the place where, and the
1 28 manner in which interested persons may present their views.
1 29 Sec. 3. Section 17A.4, subsection 1, paragraph b, Code
1 30 2009, is amended to read as follows:
1 31 b. Afford all interested persons not less than ~~twenty~~
1 32 sixty days after publication of the notice of intended action
1 33 to submit data, views, or arguments in writing. If timely
1 34 requested in writing by twenty-five interested persons, by a
1 35 governmental subdivision, by the administrative rules review
2 1 committee, by an agency, or by an association having not less
2 2 than twenty-five members, the agency must give interested
2 3 persons an opportunity to make oral presentation. The
2 4 opportunity for oral presentation must be held at least twenty
2 5 days after publication of the notice of its time and place in
2 6 the Iowa administrative bulletin. The agency shall consider
2 7 fully all written and oral submissions respecting the proposed
2 8 rule. Within one hundred eighty days following either the
2 9 notice published according to the provisions of paragraph "a"
2 10 or within one hundred eighty days after the last date of the
2 11 oral presentations on the proposed rule, whichever is later,
2 12 the agency shall adopt a rule pursuant to the rulemaking
2 13 proceeding or shall terminate the proceeding by publishing
2 14 notice of termination in the Iowa administrative bulletin.

2 15 Sec. 4. Section 17A.4, subsection 2, Code 2009, is amended
2 16 to read as follows:

2 17 2. An agency shall include in a preamble to each rule it
2 18 adopts a reference to the authority delegated to the agency by
2 19 any provision of law, pursuant to which the rule is adopted.
2 20 An agency shall also include in a preamble to each rule it
2 21 adopts a brief explanation of the principal reasons for its
2 22 action and, if applicable, a brief explanation of the
2 23 principal reasons for its failure to provide in that rule for
2 24 the waiver of the rule in specified situations if no such
2 25 waiver provision is included in the rule. This explanatory
2 26 requirement does not apply when the agency adopts a rule that
2 27 only defines the meaning of a provision of law if the agency
2 28 does not possess delegated authority to bind the courts to any
2 29 extent with its definition. ~~In addition, if requested to do~~
2 30 ~~so by an interested person, either prior to adoption or within~~
2 31 ~~thirty days thereafter, the~~ The agency shall issue a concise
2 32 statement of the principal reasons for and against the rule
2 33 adopted, incorporating therein the reasons for overruling
2 34 considerations urged against the rule. ~~This concise statement~~
2 35 ~~shall be issued either at the time of the adoption of the rule~~
3 1 ~~or within thirty-five days after the agency receives the~~
3 2 ~~request. Each oral or written submission respecting the rule~~
3 3 ~~shall be addressed provided, however, that similar comments~~
3 4 ~~may be grouped together and addressed in one response. The~~
3 5 ~~transcript of the rulemaking hearing shall not suffice as the~~
3 6 ~~response to comments required by this subsection. The agency~~
3 7 ~~statement shall be made available to the public thirty-five~~
3 8 ~~days before adoption of the rule except in the case of a rule~~
3 9 ~~adopted without notice pursuant to subsection 3. In the case~~
3 10 ~~of a rule adopted without notice pursuant to subsection 3, the~~
3 11 ~~statement shall be made available to the public within~~
3 12 ~~thirty-five days after adoption of the rule. The statement~~
3 13 ~~shall be available in electronic format, including but not~~
3 14 ~~limited to access to the documents through the internet. In~~
3 15 ~~judicial review of agency action pursuant to section 17A.19,~~
3 16 ~~the agency shall not modify its reasoning, justification, or~~
3 17 ~~basis for the rule from the preamble or statement issued~~
3 18 ~~pursuant to this subsection.~~

3 19 Sec. 5. Section 17A.4, subsection 6, paragraph a, Code
3 20 2009, is amended to read as follows:

3 21 a. If the administrative rules review committee created by
3 22 section 17A.8, the governor, or the attorney general finds
3 23 objection to all or some portion of a proposed or adopted rule
3 24 because that rule is deemed to be unreasonable, arbitrary,
3 25 capricious, or ~~otherwise beyond the authority delegated to~~
3 26 ~~based on an erroneous interpretation of a provision of law by~~
3 27 the agency, the committee, governor, or attorney general may,
3 28 in writing, notify the agency of the objection. In the case
3 29 of a rule issued under subsection 3, or a rule made effective
3 30 under section 17A.5, subsection 2, paragraph "b", the
3 31 committee, governor, or attorney general may notify the agency
3 32 of such an objection. The committee, governor, or attorney
3 33 general shall also file a certified copy of such an objection
3 34 in the office of the administrative code editor and a notice
3 35 to the effect that an objection has been filed shall be
4 1 published in the next issue of the Iowa administrative
4 2 bulletin and in the Iowa administrative code when that rule is
4 3 printed in it. The burden of proof shall then be on the
4 4 agency in any proceeding for judicial review or for
4 5 enforcement of the rule heard subsequent to the filing to
4 6 establish that the rule or portion of the rule timely objected
4 7 to according to the above procedure is not unreasonable,
4 8 arbitrary, capricious, or ~~otherwise beyond the authority~~
4 9 ~~delegated to it based on an erroneous interpretation of a~~
4 10 ~~provision of law.~~

4 11 Sec. 6. Section 17A.4A, Code 2009, is amended to read as
4 12 follows:

4 13 17A.4A REGULATORY ANALYSIS.

4 14 1. An agency shall issue a regulatory analysis of a
4 15 proposed rule that complies with subsection 2, ~~paragraph "a",~~
4 16 if, within ~~thirty-two~~ forty days after the published notice of
4 17 proposed rule adoption, a written request for the analysis is
4 18 submitted to the agency by the administrative rules review
4 19 committee or the administrative rules coordinator. An agency
4 20 shall issue a regulatory analysis of a proposed rule that
4 21 complies with subsection 2, ~~paragraph "b",~~ if the rule would
4 22 have a substantial impact on ~~small business~~ a regulated person
4 23 and if, within ~~thirty-two~~ forty days after the published
4 24 notice of proposed rule adoption, a written request for
4 25 analysis is submitted to the agency by the administrative

4 26 rules review committee, the administrative rules coordinator,
4 27 at least twenty-five persons signing that request who each
4 28 qualify as a ~~small business regulated person~~ or by an
4 29 organization representing at least twenty-five such persons.
4 30 If a rule has been adopted without prior notice and an
4 31 opportunity for public participation in reliance upon section
4 32 17A.4, subsection 3, the written request for an analysis that
4 33 complies with subsection 2, ~~paragraph "a" or "b"~~, may be made
4 34 within seventy days of publication of the rule.

4 35 2. a. Except to the extent that a written request for a
5 1 regulatory analysis expressly waives one or more of the
5 2 following, the regulatory analysis must contain all of the
5 3 following:

5 4 (1) A description of the classes of persons who probably
5 5 will be affected by the proposed rule, including classes that
5 6 will bear the costs of the proposed rule and classes that will
5 7 benefit from the proposed rule.

5 8 (2) A description of the probable quantitative and
5 9 qualitative impact of the proposed rule, economic or
5 10 otherwise, upon affected classes of persons, including a
5 11 description of the nature and amount of all of the different
5 12 kinds of costs that would be incurred in complying with the
5 13 proposed rule.

5 14 (3) The probable costs to the agency and to any other
5 15 agency of the implementation and enforcement of the proposed
5 16 rule and any anticipated effect on state revenues.

5 17 (4) A comparison of the probable costs and benefits of the
5 18 proposed rule to the probable costs and benefits of inaction.

5 19 (5) A determination of whether less costly methods or less
5 20 intrusive methods exist for achieving the purpose of the
5 21 proposed rule.

5 22 (6) A description of any alternative methods for achieving
5 23 the purpose of the proposed rule that were seriously
5 24 considered by the agency and the reasons why they were
5 25 rejected in favor of the proposed rule.

5 26 (7) An identification of the problem the proposed rule is
5 27 intended to address, a determination of whether the proposed
5 28 rule is necessary to address the problem, and a description of
5 29 how the proposed rule addresses the problem.

5 30 (8) A citation to and summary of each scientific or
5 31 statistical study, report, or analysis that serves as a basis
5 32 for the proposed rule, together with an indication of how the
5 33 full text of the study, report, or analysis may be obtained.

5 34 b. In the case of a rule that would have a substantial
5 35 impact on ~~small business a regulated person~~, the regulatory
6 1 analysis must contain a discussion of whether it would be
6 2 feasible and practicable to do any of the following to reduce
6 3 the impact of the rule on ~~small business a regulated person~~:

6 4 (1) Establish less stringent compliance or reporting
6 5 requirements in the rule for ~~small business a regulated~~
6 6 ~~person~~.

6 7 (2) Establish less stringent schedules or deadlines in the
6 8 rule for compliance or reporting requirements for ~~small~~
6 9 ~~business a regulated person~~.

6 10 (3) Consolidate or simplify the rule's compliance or
6 11 reporting requirements for ~~small business a regulated person~~.

6 12 (4) Establish performance standards to replace design or
6 13 operational standards in the rule for ~~small business a~~
6 14 ~~regulated person~~.

6 15 (5) Exempt ~~small business a regulated person~~ from any or
6 16 all requirements of the rule.

6 17 c. The agency shall reduce the impact of a proposed rule
6 18 that would have a substantial impact on ~~small business a~~
6 19 ~~regulated person~~ by using a method discussed in paragraph "b"
6 20 if the agency finds that the method is legal and feasible in
6 21 meeting the statutory objectives which are the basis of the
6 22 proposed rule.

6 23 3. Each regulatory analysis must include quantifications
6 24 of the data to the extent practicable and must take account of
6 25 both short-term and long-term consequences.

6 26 4. Upon receipt by an agency of a timely request for a
6 27 regulatory analysis, the agency shall extend the period
6 28 specified in this chapter for each of the following until at
6 29 least twenty days after publication in the administrative
6 30 bulletin of a concise summary of the regulatory analysis:

6 31 a. The end of the period during which persons may make
6 32 written submissions on the proposed rule.

6 33 b. The end of the period during which an oral proceeding
6 34 may be requested.

6 35 c. The date of any required oral proceeding on the
7 1 proposed rule.

7 2 5. In the case of a rule adopted without prior notice and
7 3 an opportunity for public participation in reliance upon
7 4 section 17A.4, subsection 3, the summary must be published
7 5 within seventy days of the request.

7 6 6. The published summary of the regulatory analysis must
7 7 also indicate where persons may obtain copies of the full text
7 8 of the regulatory analysis and where, when, and how persons
7 9 may present their views on the proposed rule and demand an
7 10 oral proceeding thereon if one is not already provided. The
7 11 agency shall issue a concise statement in response to all
7 12 written or oral submissions respecting the regulatory analysis
7 13 pursuant to section 17A.4, subsection 2, as if the regulatory
7 14 analysis were a rule. A final regulatory analysis shall be
7 15 published in the Iowa administrative bulletin upon adoption of
7 16 the rule, subject to section 17A.6, subsection 3, which shall
7 17 apply to the publication of the final regulatory analysis as
7 18 if it were a rule. Agencies shall make available to the
7 19 public, to the maximum extent feasible, the published summary
7 20 and the full text of the regulatory analysis and the final
7 21 regulatory analysis described in this subsection in an
7 22 electronic format, including, but not limited to, access to
7 23 the documents through the internet.

7 24 7. If the agency has made a good faith effort to comply
7 25 with the requirements of subsections 1 through 3, the rule may
7 26 not be invalidated on the ground that the contents of the
7 27 regulatory analysis are insufficient or inaccurate. In
7 28 judicial review of agency action pursuant to section 17A.19,
7 29 the agency shall not modify its reasoning, justification, or
7 30 basis for the rule from the regulatory analysis issued
7 31 pursuant to this section or statement issued pursuant to this
7 32 subsection.

7 33 8. a. For the purpose of this section, "small business"
7 34 means any entity including but not limited to an individual,
7 35 partnership, corporation, joint venture, association, or
8 1 cooperative, to which all of the following apply:

8 2 (1) It is not an affiliate or subsidiary of an entity
8 3 dominant in its field of operation.

8 4 (2) It has either twenty or fewer full-time equivalent
8 5 positions or less than one million dollars in annual gross
8 6 revenues in the preceding fiscal year.

8 7 b. For purposes of this definition, "dominant in its field
8 8 of operation" means having more than twenty full-time
8 9 equivalent positions and more than one million dollars in
8 10 annual gross revenues, and "affiliate or subsidiary of an
8 11 entity dominant in its field of operation" means an entity
8 12 which is at least twenty percent owned by an entity dominant
8 13 in its field of operation, or by partners, officers,
8 14 directors, majority stockholders, or their equivalent, of an
8 15 entity dominant in that field of operation.

8 16 Sec. 7. Section 17A.8, Code 2009, is amended by adding the
8 17 following new subsection:

8 18 NEW SUBSECTION. 10. If three or more members of the
8 19 committee make a written submission respecting a rule, whether
8 20 proposed or adopted, the agency shall respond in writing to
8 21 the submission within twenty days of the submission. Such
8 22 submission, and the response to it, shall be available to the
8 23 public for inspection.

8 24 Sec. 8. NEW SECTION. 17A.9B COMPLIANCE ASSISTANCE
8 25 LETTER.

8 26 An agency may issue a compliance assistance letter to any
8 27 person or agency. A compliance assistance letter may identify
8 28 an alleged violation of a federal or state statute, rule, or
8 29 executive order, and recommend actions to remedy the alleged
8 30 violation. A compliance assistance letter shall not affect
8 31 the legal rights, duties, or privileges of the person or
8 32 agency to which the letter is issued. A compliance assistance
8 33 letter shall not be used by or on behalf of an agency for any
8 34 evidentiary purpose, including but not limited to evidence in
8 35 an enforcement action, a submission to a national database of
9 1 violations, justification for a referral to the attorney
9 2 general, or justification for a higher penalty.

9 3 Sec. 9. Section 17A.19, subsection 8, paragraph a, Code
9 4 2009, is amended to read as follows:

9 5 a. The burden of demonstrating the required prejudice and
9 6 the invalidity of agency action is on the party asserting
9 7 invalidity. However, if the authority delegated to an agency
9 8 by a provision of law is challenged, the agency shall bear the
9 9 burden of demonstrating the lack of prejudice. If an agency
9 10 fails to meet the burden of proof, the court shall declare the
9 11 rule or portion of the rule objected to invalid and judgment
9 12 shall be rendered against the agency for all fees and other

9 13 expenses. Such fees and other expenses shall include but not
9 14 be limited to reasonable attorney fees, expert witness fees,
9 15 court costs, and contested case expenses. Such fees and
9 16 expenses shall be payable by the director of the department of
9 17 administrative services from the support appropriations of the
9 18 agency which issued the rule in question.

9 19 Sec. 10. Section 17A.19, subsection 10, Code 2009, is
9 20 amended by adding the following new paragraph:

9 21 NEW PARAGRAPH. o. Based on broad statutory authority
9 22 without a specific law being implemented. For purposes of
9 23 this paragraph, a grant of broad statutory authority means a
9 24 state statute generally describing the purpose, power, and
9 25 function of an agency, or a state statute which establishes
9 26 legislative purpose, intent, or policy. Rules that are
9 27 related to the purpose of the enabling legislation or within
9 28 the class of the agency's powers and duties shall be
9 29 considered to be based on broad statutory authority unless
9 30 specifically authorized by state statute.

9 31 Sec. 11. Section 17A.19, subsection 11, Code 2009, is
9 32 amended to read as follows:

9 33 11. In making the determinations required by subsection
9 34 10, paragraphs "a" through "~~n~~" "o", the court shall do all of
9 35 the following:

10 1 a. Shall not give any deference to the view of the agency
10 2 with respect to whether particular matters have been vested by
10 3 a provision of law in the discretion of the agency.

10 4 b. Should not give any deference to the view of the agency
10 5 with respect to particular matters that have not been vested
10 6 by a provision of law in the discretion of the agency.

10 7 c. Shall give appropriate deference to the view of the
10 8 agency with respect to particular matters that have been
10 9 vested by a provision of law in the discretion of the agency.

10 10 Sec. 12. Section 17A.19, subsection 12, Code 2009, is
10 11 amended to read as follows:

10 12 12. A defendant in a suit for civil enforcement of agency
10 13 action may defend on any of the grounds specified in
10 14 subsection 10, paragraphs "a" through "~~n~~" "o", if that
10 15 defendant, at the time the enforcement suit was filed, would
10 16 have been entitled to rely upon any of those grounds as a
10 17 basis for invalidating the agency action in a suit for
10 18 judicial review of that action brought at the time the
10 19 enforcement suit was filed. If a suit for civil enforcement
10 20 of agency action in a contested case is filed within the time
10 21 period in which the defendant could have filed a petition for
10 22 judicial review of that agency action, and the agency
10 23 subsequently dismisses its suit for civil enforcement of that
10 24 agency action against the defendant, the defendant may, within
10 25 thirty days of that dismissal, file a petition for judicial
10 26 review of the original agency action at issue if the defendant
10 27 relied upon any of the grounds for judicial review in
10 28 subsection 10, paragraphs "a" through "~~n~~" "o", in a responsive
10 29 pleading to the enforcement action, or if the time to file a
10 30 responsive pleading had not yet expired at the time the
10 31 enforcement action was dismissed.

10 32 Sec. 13. Section 17A.33, Code 2009, is amended to read as
10 33 follows:

10 34 17A.33 REVIEW BY ADMINISTRATIVE RULES REVIEW COMMITTEE.

10 35 1. The administrative rules review committee shall review
11 1 existing rules, as time permits, to determine if there are
11 2 adverse or beneficial effects from these rules. The committee
11 3 shall give a high priority to rules that are referred to it by
11 4 small business ~~as defined in section 17A.4A.~~ The review of
11 5 these rules shall be forwarded to the appropriate standing
11 6 committees of the house and senate.

11 7 2. For the purpose of this section, "small business" means
11 8 any entity including but not limited to an individual,

11 9 partnership, corporation, joint venture, association, or
11 10 cooperative, to which all of the following apply:

11 11 a. It is not an affiliate or subsidiary of an entity
11 12 dominant in its field of operation.

11 13 b. It has either twenty or fewer full-time equivalent
11 14 positions or less than one million dollars in annual gross
11 15 revenues in the preceding fiscal year.

11 16 Sec. 14. Section 455A.4, Code 2009, is amended by adding
11 17 the following new subsections:

11 18 NEW SUBSECTION. 6. The director, deputy director, or
11 19 division administrators shall recommend rules to the
11 20 environmental protection commission or the natural resource
11 21 commission for the implementation of their respective
11 22 responsibilities before a notice of intended action is given
11 23 pursuant to section 17A.4.

11 24 NEW SUBSECTION. 7. All rules adopted by a commission must
11 25 be approved in writing by the director. A rule adopted by the
11 26 commission without written approval of the director is void.

11 27 Sec. 15. Section 455A.5, Code 2009, is amended by adding
11 28 the following new subsection:

11 29 NEW SUBSECTION. 7. All rules adopted by the commission
11 30 must be approved in writing by the director. A rule adopted
11 31 by the commission without written approval of the director is
11 32 void.

11 33 Sec. 16. Section 455A.6, Code 2009, is amended by adding
11 34 the following new subsection:

11 35 NEW SUBSECTION. 7. All rules adopted by the commission
12 1 must be approved in writing by the director. A rule adopted
12 2 by the commission without written approval of the director is
12 3 void.

12 4 Sec. 17. NEW SECTION. 455A.22 RULEMAKING PROCESS.
12 5 The environmental protection commission and the natural
12 6 resource commission shall give written notice to the director
12 7 of the department of economic development and the secretary of
12 8 agriculture no less than sixty days prior to approval of a
12 9 notice of intended action under section 17A.4. The notice
12 10 shall include a description of the subject matter of the rule
12 11 and include the most recent draft of the notice of intended
12 12 action. Written or oral submissions may be made by the
12 13 director of the department of economic development and the
12 14 secretary of agriculture no later than the conclusion of the
12 15 public comment period provided pursuant to section 17A.4. All
12 16 recommendations in such submissions shall be advisory in
12 17 nature and shall not be binding on the director of the
12 18 department of natural resources or the environmental
12 19 protection commission or the natural resource commission. The
12 20 environmental protection commission and the natural resource
12 21 commission shall give written notice of intent to adopt rules
12 22 pursuant to section 17A.4, subsection 3, to the department of
12 23 economic development director and the secretary of
12 24 agriculture, no less than ten days prior to filing the rule
12 25 with the administrative rules coordinator. The environmental
12 26 protection commission and the natural resource commission
12 27 shall respond to all recommendations including the reasons for
12 28 overruling any recommendations made by the director of the
12 29 department of economic development and the secretary of
12 30 agriculture.

12 31 Sec. 18. Section 625.29, subsection 1, paragraph a, Code
12 32 2009, is amended by striking the paragraph.

12 33 Sec. 19. Section 625.29, subsection 3, Code 2009, is
12 34 amended to read as follows:

12 35 3. A party seeking an award for fees and other expenses
13 1 under this section must file a claim for relief as a part of
13 2 the civil action or as a part of the action for judicial
13 3 review brought against the state pursuant to chapter 17A. If
13 4 the amount sought includes an attorney's fees or fees for an
13 5 expert, the application shall include an itemized statement
13 6 for these fees indicating the actual time expended in
13 7 representing the party and the rate at which the fees were
13 8 computed. ~~The party seeking relief must establish that the~~

~~13 9 state's case was not supported by substantial evidence.~~

13 10 Sec. 20. EFFECTIVE DATE. This Act, being deemed of
13 11 immediate importance, takes effect upon enactment.

13 12 Sec. 21. APPLICABILITY. This Act applies to all rules
13 13 published as a notice of intended action or adopted on or
13 14 after the effective date of this Act. If a rule is amended on
13 15 or after the effective date of this Act, this Act applies to
13 16 the entire rule being amended, not just to the amended portion
13 17 of the rule.

13 18 EXPLANATION

13 19 This bill revises Code section 17A.4, relating to the
13 20 administrative rulemaking process, by expanding the period for
13 21 public comment from 20 to 60 days and by requiring that each
13 22 proposed rule set out the statutory authority and a detailed
13 23 statement of reasons for the proposal not less than 35 days
13 24 before the rule is adopted. The statement must address all
13 25 issues raised during the rulemaking. On judicial review, the
13 26 agency cannot modify its reasoning, justification, or basis
13 27 for the rule from the preamble or statement.

13 28 The bill revises the authority of the governor, the
13 29 administrative rules review committee, or the attorney general
13 30 to object to the provisions of a rule. Currently, grounds for
13 31 an objection include a finding that a rule is beyond the
13 32 authority delegated to the agency. The bill revises this to a
13 33 finding that the rule is based on an erroneous interpretation
13 34 of a provision of law.

13 35 The bill also revises current procedures for the regulatory
14 1 analysis of administrative rules in Code section 17A.4A. The
14 2 time frame for requesting the statement is expanded from 32 to
14 3 40 days and adds new criteria that must be addressed.

14 4 The bill also revises that portion of the regulatory
14 5 analysis that is specific to small business. Any reference to
14 6 small business is removed and the term "regulated person" is
14 7 substituted. That term is defined as any person that may be
14 8 impacted by a proposed rule through an increased regulatory
14 9 burden, including increased compliance or reporting costs.

14 10 The bill amends Code section 17A.8, relating to the
14 11 administrative rules review committee, by allowing three or
14 12 more members to make a written submission to an agency
14 13 promulgating a rule and by requiring a written response within
14 14 20 days of the submission.

14 15 The bill creates a new provision for a compliance
14 16 assistance letter, similar to the existing provisions for a
14 17 declaratory order. This process allows a person to seek
14 18 advice from an agency relating to alleged violation of a
14 19 federal or state statute, rule, or executive order, and
14 20 recommend actions to remedy the alleged violation. The letter
14 21 cannot be used by or on behalf of an agency for any
14 22 evidentiary purpose.

14 23 The bill also revises provisions relating to the judicial
14 24 review of agency actions under Code section 17A.19. The bill
14 25 requires an agency to prove that it has the required legal
14 26 authority to support its contested action. If the agency
14 27 fails, the court is required to declare the rule or portion of
14 28 the rule objected to invalid and judgment shall be rendered
14 29 against the agency for all fees, including attorney fees and
14 30 other expenses.

14 31 The bill adds a new ground on which an agency action may be
14 32 overturned by a reviewing court: that the rule is based on
14 33 broad statutory authority without a specific law being
14 34 implemented.

14 35 The bill revises rulemaking specific to the department of
15 1 natural resources, requiring that all rules adopted by either
15 2 the environmental protection commission or the natural
15 3 resource commission must be approved in writing by the
15 4 director. A rule adopted by a commission without written
15 5 approval of the director is void. The bill also establishes a
15 6 specific rulemaking process for the department in new Code
15 7 section 455A.22, requiring special notice to the department of
15 8 economic development and the secretary of agriculture no less
15 9 than 60 days prior to the commencement of rulemaking.

15 10 The bill revises Code section 625.29, relating to the
15 11 assessment of court costs and attorney fees to a person
15 12 challenging an agency action. The bill eliminates the agency
15 13 defense that the state's case was supported by substantial
15 14 evidence.

15 15 The bill provides that the new requirements apply to all
15 16 rules noticed, adopted, or amended on or after the effective
15 17 date of the bill.

15 18 The bill takes effect upon enactment.

15 19 LSB 2219YC 83

15 20 jr/rj/5